

NORTH DAKOTA BOARD OF MEDICINE

November 19, 2021

Call to Order:

Robert Sticca, MD, chair, called the meeting to order at 8:00 a.m. Attending the meeting via Zoom:

Robert Sticca, MD, Chair
Rup Nagala, MD, Vice -Chair
Lacey Armstrong, MD
Thomas Carver, DO
Catherine Houle, MD
Mandi Johnson, MD
Vaune Johnson
Robert Kemp, MD
Jay Metzger, PA-C
Brenda Miller, MD
Rajendra Potluri
Ann Reich
Michael Quast, MD

Also present: Sandra DePountis, executive director; Lynette McDonald, deputy executive director; Stacy Moldenhauer, litigation counsel (present through COVID discussion); and Allyson Hicks, general counsel.

Guests present: Courtney Koebele and Donna Thornson, NDMA; Dr. Melissa Henke and Ann Leiseth, NDPHP (present through the NDPHP presentation); Dr. K.O. (present through K.O. minutes discussion).

The following were present via Zoom for their respective interviews: Abdul Haji, MD, and Robert Powell, MD. Drs. Scott and Nathan Mickelson were present in person through Dr. Mickelson's interview.

Introduction of New Board Members

The Board welcomed Drs. Johnson and Kemp to the Board.

Minutes

Dr. Houle moved to approve the August 20, 2021, regular meeting minutes, seconded by Dr. Carver. The motion passed unanimously.

IPB vs Daniel Walsh, MD - Order of Completion

Dr. Walsh was subject to disciplinary action with Board ordered courses for anger management and professionalism. These courses were completed, and fees were paid. Dr. Nagala made a motion to approve the proposed Order of Completion, seconded by Dr. Potluri. The motion passed unanimously by roll call vote.

IPB v. Stanley Ziomek, MD – Partial Order of Completion

Dr. Ziomek was subject to discipline after a CPEP competency evaluation showed standard/quality of care issues. Dr. Ziomek was ordered to complete coursework addressing the issues noted in the evaluation and his license was restricted from performing endovascular procedures. Dr. Ziomek completed the required courses so the only restriction still in place is for endovascular procedures – thus a Partial Order of Completion was presented for review. Ms. Vaune Johnson made a motion to approve the proposed Partial Order of Completion, seconded by Dr. Miller. The motion passed unanimously by roll call vote.

Interview for Licensure – Abdul Q. Haji, MD

Dr. Haji is a board-certified cardiovascular disease and electrophysiology physician seeking licensure. After submitting his initial application, Dr. Haji was charged with a misdemeanor – battery on a healthcare provider, subsequently allowed to retire in lieu of termination, and a complaint was filed with the Virginia Medical Board. The office learned of this information through a Hospital/Clinic Reference form, and it was only in seeking clarification that Dr. Haji disclosed the information, despite having signed an affidavit to update his application information. Dr. Nagala led the interview of this applicant.

Dr. Haji provided additional information during his interview of a three-day professional boundary and ethics course he is scheduled to attend in December and provided context for the

oversight in reporting to the Board the subsequent charges and investigation, along with answering questions regarding the incidents that led to the charges.

Dr. Potluri motioned to grant the license, seconded by Dr. Nagala. The motion passed by roll call vote 11-2 with Ms. Ann Reich and Ms. Vaune Johnson voting no and all others voting in favor.

Interview for Licensure – Robert Powell, MD

Dr. Powell's application for licensure includes a 2006 malpractice settlement of \$1,200,000 for wrong medication dispensed, 5-month suspension of clinical privileges, and a Hospital/Clinic Reference form reporting practice and demeanor concerns. Dr. Armstrong led the interview of this applicant.

Dr. Powell answered questions regarding his background and malpractice case.

Dr. Carver motioned to grant the license, seconded by Dr. Houle. The motion passed unanimously roll call vote.

Interview for Licensure – Nathan Mickelson, DO

Dr. Caver, who led the interview of this applicant, started the discussion with an overview of Dr. Mickelson's history. Dr. Mickelson was originally denied licensure in 2015 for conviction of possession of child pornography. In 2019 he reapplied for licensure and was asked to provide a pathway back to practice as he had not practiced clinically since leaving his residency in 2011. In February 2021, Dr. Mickelson was again interviewed before the Board requesting an administrative license for his work with COVID and West Nile with the North Dakota Department of Health. The Board passed a motion to issue the administrative license. Dr. Mickelson is again back to interview before the Board, requesting an unrestricted, full license to practice clinically, after his position with the Department of Health was cut for budget reasons.

Dr. Mickelson providing information on the physician re-entry and retraining program he is attending at the University of California. Part of the program is an in-person practicum that requires a clinical license.

Dr. Mickelson states he continues with his 12-step program and relapse prevention program and stays in touch with his sponsor.

The Board discussed that Dr. Mickelson did not complete his residency and has not practiced in a clinical setting since 2011, raising concerns with issuing a clinical license when clinical competency has not been shown. Dr. Carver made a motion to grant a restricted license that would only allow Dr. Mickelson to be used for the in-person practicum clinical component of the re-entry program and would otherwise continue to be an administrative license. Dr. Mickelson would need to come back to the Board for additional clinical practice outside of the re-training program. Dr. Kemp seconded the motion. The motion passed 7-6 with Ms. Ann Reich, Ms. Vaune Johnson, PA-C Metzger, and Drs. Miller, Potluri, Sticca, voting no and all others voting in favor.

NDPHP Report

Dr. Melissa Henke provided the NDPHP report: there are currently fifteen (15) Board ordered participants, twenty-four (24) voluntary participants, and four (4) pending participants – for a total of forty-three (43) active participants.

Dr. Henke and Ms. Ann Leiseth gave an update on discussions with the Board of Nursing and potential law change to allow them to be participants with the PHP. Future collaboration between the PHP and NDBOM were also discussed to further develop law and policies.

Draft Operations Manual

The Board reviewed a proposed draft of its Operations Manual that provided policies and requirements for filling Board vacancies, training and orientation of new members, and Board members attending required training to obtain certification to be able to review Criminal History Record Checks. Dr. Nagala motioned to approve the draft Operations Manual as presented, seconded by Dr. Houle. The motion passed unanimously by roll call vote.

COVID Misinformation/Disinformation Discussion

The Board reviewed the FSMB statement regarding COVID mis/disinformation, along with similar statements from credentialing boards and other state medical boards. The Board also reviewed disciplinary actions taken in other states.

In addition, information was provided regarding HB 1514 passed by the ND Legislature during the Special Session from the Legislative Committee. The bill that was passed was amended from the original bill and restricts the Board's ability to review Ivermectin prescriptions for COVID. The Committee discussed how it opposed the original bill, along with the amendments – as it would oppose any restrictions on the Board's ability to fulfill its legislative purpose of protecting the health, safety, and welfare of the public.

To that end, the Board discussed that it supported the FSMB statement and would like to issue a similar statement. Dr. Miller volunteered to work with Director DePountis on the statement and bring it back to the Board for approval at the next meeting.

Physician Approval of License and Waiver of Interview

Dr. Quast moved to approve the one hundred and twelve (112) licenses and waivers of interview for physician applicants, which included eight (8) cases with derogatory information, one (1) administrative license, and one (1) special license, as presented, seconded by Dr. Nagala. The motion passed unanimously by a roll call vote.

Physician Assistant Approval of License and Waivers of Interview

PA-C Metzger motioned to approve the licensure and waiver of interview for the fourteen (14) physician assistants, as presented, seconded by Dr. Carver. The motion passed unanimously by a roll call vote.

Genetic Counselor Waivers of Interview

Dr. Houle motioned to approve the licensure and waiver of interviews for the eighteen (18) genetic counselors, as presented, seconded by Dr. Nagala. The motion passed unanimously by a roll call vote.

IMLC License Granted

The Board received information on five (5) Letters of Qualification for State of Principal Licensure and one hundred and five (105) non-principal licenses issued under the Compact. Deputy Director McDonald gave an update on the IMLCC including that – to date – ninety-four (94) SPLs and six hundred and sixty (660) non-SPL licenses have been issued in North Dakota.

Dr. Nagala also gave an update on the FSMB through his role as a member of the Nominating Committee.

Investigative Panel A report

Dr. Carver, Chair, reported that Investigative Panel A reviewed a total of twenty (20) cases: two (2) confidential Letters of Concern were authorized, four (4) cases were tabled for further review, two (2) out of state licensees' information will be referred to their licensing state for investigation; one (1) renewal was locked; all other cases dismissed, or no action taken.

Investigative Panel B report

Dr. Houle, Chair, reported that Investigative Panel B reviewed a total of twenty-four (24) cases: one (1) case was referred for formal discipline, two (2) confidential Letters of Concern were authorized, three (3) cases were tabled for further review, all other cases dismissed, or no action taken.

Petition for Eligibility – Edson Franco, MD

Dr. Franco failed Step 2 of the USMLE five times, passing on the sixth attempt. Board law requires passage within three attempts, or the applicant must petition the Board for exception pursuant to N.D.A.C. 50-02-11-03.1(2) upon showing: (1) a valid license in another state, (2) practice of a minimum of 10 (ten) years, (3) no disciplinary action in other state medical licensing boards, and (4) specialty board certification. Dr. Franco is licensed in three other states (CA, FL, MO) with no discipline, has practiced for more than ten years, and is

General Surgery board-certified. Dr. Houle made a motion to approve eligibility, seconded by Dr. Nagala. Motion passed unanimously by roll call vote.

Petition for Eligibility – Robert Francilin, MD

Dr. Francilin failed Step 2 of the USMLE three times, passing on the fourth attempt. Board law requires passage within three attempts, or the applicant must petition the Board for exception pursuant to N.D.A.C. 50-02-11-03.1(2) upon showing: (1) a valid license in another state, (2) practice of a minimum of 10 (ten) years, (3) no disciplinary action in other state medical licensing boards, and (4) specialty board certification. Dr. Francilin is licensed in three other states (SC, GA, NM) with no discipline, has practiced for more than eleven years, and is Internal Medicine board-certified. Dr. Nagala made a motion to approve eligibility, seconded by Dr. Johnson. Motion passed unanimously by roll call vote.

Petition for Eligibility – Kayayoon Ebrahimi, MD

N.D.A.C. 50-02-02-01(2) allows for a special license to an applicant who does not meet all technical eligibility requirements if the Board determines the applicant is uniquely qualified through training or experience or will make a unique and special contribution to the practice of medicine not readily available to the citizens of the state. The Board must consider a variety of factors as dictated by the law to determine whether a special license should be issued.

Dr. Ebrahimi is a medical retina specialist intending to practice at Sanford Health. Dr. Anderson at Sanford Health submitted a letter in support of the special license due to Dr. Ebrahimi's training in ocular pathology and oncology – an unmet specialty area needed in the state. Dr. Ebrahimi is not board certified and does not have 30 months ACGME accredited postgraduate training but has held four licenses in other states – one of which is still active, has practiced for the past five years without discipline or malpractice, and passed the USMLE exams. Dr. Nagala made a motion to approve the special licenses recognizing the unmet specialty area Dr. Ebrahimi will fulfill, seconded by Dr. Potluri. Motion passed unanimously by roll call vote.

Petition for Eligibility – Mohamad Ammar Al Nuss, MD

N.D.A.C. 50-02-02-01(2) allows for a special license to an applicant who does not meet all technical eligibility requirements if the Board determines the applicant is uniquely qualified through training or experience or will make a unique and special contribution to the practice of medicine not readily available to the citizens of the state. The Board must consider a variety of factors as dictated by the law to determine whether a special license should be issued.

Dr. Al Nuss is seeking licensure with a transplant surgery specialty. He is not Board certified and does not have 30 months of ACGME accredited training but completed three different fellowships. He holds an unrestricted license in Florida – after being required to practice under supervision for 6 months. The Board discussed that it required additional information on whether this presents a unique/special contribution not readily available in North Dakota before it could approve the license. Dr. Quast made a motion to table this application pending additional information, seconded by Dr. Nagala. Motion passed unanimously by roll call vote.

Petition to Amend the February 19, 2021, Meeting Minutes

Dr. K.O. is requesting language be struck from the minutes in which the Board considered removing conditions previously placed on his licenses, claiming that the minutes were too detailed and detrimental to his career. The Board discussed the balance between keeping accurate records of proceedings in order to provide a basis for subsequent review/decisions versus the concerns raised by Dr. K.O. Dr. Quast made a motion to amend the July and September 2020 and February 2021 meeting minutes to only reference the physician's initials, seconded by Dr. Potluri. Motion passed 12-1 with Ms. Ann Reich voting no and all others voting in favor.

IT Discussion

The Board discussed the recent email hack in the Board office and its need to increase security measures to the IT, database, and software systems. The Board discussed several options including whether to conduct a Cybersecurity Assessment and Audit or to procure IT

vendors with security enhancement requirements. The Board determined it would create a committee to review and decide on how to proceed.

Standing Committee Discussion

The Board discussed appointing standing committees for a year or more so that there is continuity in discussions and developed education and knowledge on certain topics by the committee members. Four potential committees were reviewed and ultimately approved:

(1) Laws, Rules, and Legislative Committee: this committee will review the Board's rules and laws, and aid in bill review and testimony for the 2023 legislative session. Committee members will be Drs. Miller, Sticca, and Quast.

(2) PHP Committee: this committee will work on future collaborations with the PHP to implement policies and procedures as required by law and contract. Committee members will be Drs. Armstrong, Carver, and Houle.

(3) IT Committee: this committee, as noted above, will evaluate proposals of the Cybersecurity Assessment and Audit vendors, review the Board's IT Vendor, and aid in contract negotiations of the Website/Database vendor. Committee members will be Drs. Johnson and Nagala and Ms. Ann Reich. The Board discussed the need to move forward in a timely manner with IT decisions to secure vulnerabilities in the system. PA-C Metzger therefore made a motion granting the IT Committee authority to make decisions on critical issues, including whether to grant an award for an Assessment/Audit vendor, without full board approval. Seconded by Dr. Houle. Motion passed unanimously by roll call vote.

(4) Budget Committee: this committee will aid in preparing the budget for the upcoming year and review the incoming audit report. Committee members will be Ms. Vaune Johnson, Dr. Kemp, and PA-C Metzger.

Discussion on a 2-year License

The Board previously discussed possibly moving to a two-year licensure system and asked the Board office to distribute a survey in conjunction with the NDMA for input from its

licensees. 77 licensees submitted responses with 38 in favor of a two-year license, 36 for a three-year license, and 3 in favor of a one-year license. FSMB information provides that approximately forty-six (46) boards have a two-year renewal cycle, sixteen (16) have one-year, and five (5) have three-year. Dr. Houle motioned to move forward in seeking a law change for a two-year license for consideration at the next legislative session. Motion was seconded by Dr. Kemp and passed unanimously by roll call vote.

2022 Meeting Schedule

The Board, at its last meeting, asked the office to distribute a survey to Board members for input on preference of meeting dates and platforms (virtual v. in person). The survey revealed five (5) board members preferring meetings in February, May, August, and November and four (4) board members preferring meetings in January, April, July, and October. The Board discussed the meeting dates and ultimately decided on meeting either the last or second to last week in the months of January, April, July, and October – with January and July being virtual meetings and April and October being in person. Dr. Houle motioned to approve the 2022 meeting schedule, seconded by Dr. Carver. The motion passed unanimously by roll call vote.

Office Matters

Staff Raises. Executive Director DePountis requested a 3% increase in staff raises for 2022. PA-C Metzger made a motion to approve the request, seconded by Dr. Potluri. Motion passed unanimously by roll call vote.

2020 Audit. A draft of the 2020 audit performed by Brady Martz was received and reviewed.

The meeting was adjourned at 12:25 p.m.



Robert Sticca, MD
Chair

Sandra DePountis

Sandra DePountis
Executive Director